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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1943.

No. **615**

JASPER CHAIR COMPANY, a Corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals
for the Seventh Circuit.

ISIDOR KAHN,
DOUGLAS L. HATCH,
ARTHUR C. NORDHOFF,
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To the United States Circuit Court of Appeals
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To the Honorable Chief Justice and the Associate Justices
of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

**SUMMARY AND SHORT STATEMENT OF THE
MATTER INVOLVED.**

The National Labor Relations Board, the petitioner in the court below, filed in said court an appendix to petitioner's brief. The Jasper Chair Company, respondent in the court below, filed in said court an appendix to respond-

ent's brief. Both were printed and are being used as a part of the printed record being submitted with this petition. The appendix prepared by the National Labor Relations Board is hereinafter for convenience referred to as "B. A.," while the appendix prepared by the respondent is hereinafter for convenience referred to as "R. A."

On July 24, 1942, a charge was filed with the National Labor Relations Board, Eleventh Region, by United Furniture Workers of America, affiliated with the CIO, charging this petitioner with having engaged in and being engaged in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of the National Labor Relations Act (B. A. 5). Subsequently, and upon said charge, the National Labor Relations Board filed a complaint against this petitioner (B. A. 6-9) and caused same, together with a notice of hearing (B. A. 10), to be served upon the petitioner. Upon issues joined by petitioner's answer to said complaint (B. A. 11-13), a hearing was held before a Trial Examiner beginning on August the 24th, 1942, and terminating on August the 27th, 1942. On September the 28th, 1942, the Trial Examiner filed his Intermediate Report (B. A. 16-34), to which the petitioner filed exceptions. Thereafter on December 31, 1942, the National Labor Relations Board made its purported Decision and Order (B. A. 13-15). On or about March 17, 1943, the National Labor Relations Board filed in the United States Circuit Court of Appeals for the Seventh Circuit its petition for enforcement of the aforesaid purported Decision and Order of the National Labor Relations Board (B. A. 1-4). Following the filing of briefs and an oral argument, on the 6th day of November, 1943, the aforesaid United States Circuit Court of Appeals filed and entered its decision and opinion in said case. Thereafter on the 27th day of November, 1943, said United States Circuit Court of Appeals entered its decree in conformity with its previous opinion and decision.

The opinion of the court below, filed November the 6, 1943, is not yet reported, and for convenience is printed in an appendix to the brief filed with this petition. A copy of the Court's decree entered November 27, 1943, also for convenience, is also printed in an appendix to the brief filed with this petition.

The petitioner herein is a corporation organized under the laws of the State of Indiana and conducts business in Jasper, Indiana. It is engaged in manufacturing office chairs.

The Decision and Order of the Board contains the following language:

"The Board has considered the Intermediate Report, the exceptions and the brief, and the entire record in the case, and hereby adopts the Findings, Conclusions, and Recommendations of the Trial Examiner" (B. A. 14).

The Board did not state its findings of fact in its Decision and Order, or in any other manner, unless the hereinabove quoted sentence from its Decision and Order shall be construed to be a statement by the Board of its findings of fact.

It is the contention of the petitioner herein, as herein-after set out, that the Board did not state its findings of fact, and, having so failed, its purported Order is without force and effect. Furthermore, it is the contention of this petitioner that the court below erred in issuing any enforcement order under the circumstances just set out.

Upon the assumption, but without conceding it to be so, that the Board's order is valid, then the Board made a finding with reference to the discharge of Leo Lannan, an employe, and an order directing his immediate and full reinstatement, together with the further order that the said Leo Lannan be made whole for any loss of pay he may have suffered by reason of his discriminatory dis-

charge. By its opinion, decision and decree, the court below decreed enforcement of the foregoing portion of the Board's order. It is the position of the petitioner herein that there is no substantial evidence whatever, under the applicable decisions on the subject, which will support a finding that Leo Lannan was discriminatorily discharged, and consequently no justification in law for the court's decree requiring the petitioner herein to reinstate him and to make him whole for any loss of pay he may have suffered.

By its opinion, decision and decree, the court below has ordered enforcement of the Board's Order against the petitioner herein, based upon a proposed finding of the Board that this petitioner was guilty of an unfair labor practice because its Superintendent on one Thursday night during the month of November, 1941, was seen standing upon the north steps of the Courthouse in Jasper, Indiana, at about 9 o'clock in the evening, while the members of the complaining union were leaving a union meeting. The exit from the meeting hall where the meeting was held was at street level on the public square which surrounds the Courthouse, and was in plain view of the Superintendent, who was charged with having stood on the Courthouse steps approximately 100 feet across the street from such exit.

By its opinion, decision and decree, the court ordered that this petitioner shall cease and desist from:

“(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the Act.” (See Appendix 2 to brief filed herewith.)

The unfair labor practices complained of are alleged to have been in violation of subsections (1) and (3) of Section 8 of the Act. Much of the evidence introduced for the purpose of showing a violation of subsection (1) of Section 8 has to do with the discharge of Leo Lannan, and, of course, the only violation of subsection (3) of Section 8 deals with the Leo Lannan case. Consequently, this petitioner urges that the order entered against it is excessively broad, even though it is found guilty of the violations set out in the Trial Examiner's Intermediate Report.

This petitioner contends that it did not violate either subsection (1) or (3) of Section 8 with respect to Leo Lannan, and further contends that, under all of the evidence, no cease and desist order of any kind should have been made and entered against it by the court below.

II.

BASIS OF JURISDICTION.

(a) Jurisdiction is invoked under **Sections 237 (b) and 240 (a) of the Judicial Code, as amended February 13, 1925 [43 Stat. 937, 28 U. S. C. A., Section 344 (b), 347 (a)]**.

(b) The United States Circuit Court of Appeals for the Seventh Circuit made and filed its opinion and decision herein and subsequently entered its order and decree herein acting on the authority contained in **Section 10 (e) of the National Labor Relations Act [49 Stat. 449, 29 U. S. C. A., Section 160 (e)]**.

(c) The opinion of the United States Circuit Court of Appeals for the Seventh Circuit was filed November 6, 1943; the decree was entered by said Circuit Court of Appeals on November the 27th, 1943. On November 24, 1943, the United States Circuit Court of Appeals for the Seventh Circuit entered an order staying enforcement and execution of judgment and decree pursuant to its Rule 25. (Note:

The decree was actually not entered until November 27, 1943.) Thereafter, on December 27, 1943, and upon application of this petitioner the said United States Circuit Court of Appeals made and entered an order further staying the execution and enforcement of its judgment and decree for thirty days, pursuant to the provisions of its Rule 25.

The opinion and decision of November 6, 1943, of the United States Circuit Court of Appeals for the Seventh Circuit and the order and decree of November 27, 1943, of said Circuit Court of Appeals were entered in a proceeding contemplated by **Section 10 (e) of the National Labor Relations Act**, *supra*.

The questions involved are substantial for the reasons:

1. That the order and decree of the United States Circuit Court of Appeals for the Seventh Circuit seeks to enforce a decision and order of the National Labor Relations Board, which order, this petitioner contends, does not include the Labor Board's findings of fact, and, therefore, in effect, is a denial of due process to this petitioner.

2. That the order and decree of the United States Circuit Court of Appeals for the Seventh Circuit in most respects, if not entirely, is not supported by substantial evidence.

3. That the order and decree of the United States Circuit Court of Appeals for the Seventh Circuit contains a cease-and-desist order which is not limited to the specific acts which were found to be, and supported by substantial evidence as constituting, unfair labor practices. The cease-and-desist order, as written by the aforesaid United States Circuit Court of Appeals, is excessively broad and works in effect as a blanket injunction against this petitioner.

III.

QUESTIONS PRESENTED.

1. Whether or not the National Labor Relations Board did “* * * state its findings of fact * * *” in its decision and order in the instant case, when, so far as its own findings of fact were concerned, it simply inserted this sentence in its said decision and order: “The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner.”

2. Whether or not, under the state of the record in this case and the peculiar facts revealed by the testimony in this case, there is any substantial evidence justifying (a) a finding that Leo Lannan, a former employe of the Company, was discriminatorily discharged, and (b) justifying an order requiring this petitioner to offer the said Leo Lannan immediate and full reinstatement to his former or substantially equivalent position, and also requiring this petitioner to make whole Leo Lannan for any loss of pay he may have suffered by reason of this petitioner's discrimination against him.

3. Whether or not it is an unfair labor practice within the meaning of the National Labor Relations Act for this petitioner's superintendent to stand on the steps of the county courthouse at 9 o'clock during an evening in November, 1941, when the place where he was standing was well lighted, considering the fact that the exit from the union hall was on the public square approximately one hundred feet from where the superintendent was standing, and which exit was within the clear view of the superintendent, and at a time when the complaining Union was holding one of its regular weekly meetings.

4. Whether or not in the instant case a blanket cease and desist order can be made and entered against this petitioner, whereas at the most petitioner was found guilty of having violated only to a small and limited degree the provisions of two subsections of Section 8 of the National Labor Relations Act. In this connection attention is called to the fact that this petitioner denies that there is any substantial evidence justifying a finding of violation of subdivision 3 of Section 8 as the only evidence with reference to a violation of subdivision 3 relates to Leo Lannan. This petitioner further urges that with the Leo Lannan transaction being eliminated there remains in the record only some minor misconduct which involves solely a violation of subdivision 1 of Section 8—so minor in fact this petitioner contends that an adverse finding against it is unjustified.

IV.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The first of the four questions herein presented pertains to the action of the court below in issuing its enforcement order of the Decision and Order of the National Labor Relations Board in the instant case, which Decision and Order of said National Labor Relations Board, according to the contention of this petitioner, did not and does not "state its findings of fact." Section 10 (c) of the National Labor Relations Act contains the following sentence:

"If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, **then the Board shall state its findings of fact**, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and

take such affirmative action, including reinstatement of employes, with or without back pay, as will effectuate the policies of this Act." (Emphasis supplied.)

The Decision and Order in the instant case merely contains the following sentence:

"The Board has considered the Intermediate Report, the exceptions and the brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner."

This petitioner contends that the inclusion of such a sentence in the Board's Decision and Order is not a compliance with the positive mandate and requirement contained in Section 10 (e) of the National Labor Relations Act, the pertinent portion of which is hereinabove quoted.

Certiorari should be allowed with reference to this first question because the United States Circuit Court of Appeals for the Seventh Circuit in this cause decided an important question of federal law which has not been, but should be, settled by this court.

2. The second of the four questions herein presented pertains to (a) the affirmance by the court below of the purported finding of the National Labor Relations Board that this petitioner violated subsections (1) and (3) of Section 8 of the National Labor Relations Act by discharging Leo Lannan, and (b), the inclusion by the court below in its Order and Decree of the two provisions, one of which requires this petitioner to offer the said Leo Lannan immediate and full reinstatement, etc., and the other of which requires this petitioner to make whole the said Leo Lannan for any loss of pay, etc.

It is the contention of this petitioner that there is no substantial evidence which will support a finding that

there was a violation on the part of this petitioner of subsections (1) or (3) of Section 8 with reference to Leo Lannan. Consequently, there should be no adverse finding against this petitioner with reference to Leo Lannan and no order should be made against this petitioner requiring that it reinstate Leo Lannan or make him whole for any loss of pay he may have sustained.

Certiorari should be allowed with reference to this second question because the court below decided a federal question in a way probably in conflict with applicable decisions of this court. It thus probably erroneously included in that portion of its decree requiring affirmative action two provisions with reference to the said Leo Lannan. The decision of the court below in the instant case is probably in conflict with the following decisions, among others, of this court:

Consolidated Edison Co. of New York, Inc., et al. v.
National Labor Relations Board et al., 305 U. S.
197;

National Labor Relations Board v. Columbian
Enameling & Stamping Co., Inc., 306 U. S. 292.

3. The third of the four questions herein presented pertains to the making by the court below of an enforcement order against this petitioner upon a purported finding of fact that this petitioner violated subsection 1 of Section 8 of the National Labor Relations Act because its superintendent stood on the steps of the county courthouse at 9 o'clock during an evening in November, 1941, when the place where he was standing was well lighted, simply because the entrance to and exist from the union hall was on the public square approximately one hundred feet from where the superintendent was standing, and which exit was within the clear view of the superintendent, and at a time when the complaining Union was holding one of its regular weekly meetings.

It is the contention of this petitioner that there is no substantial evidence in the record to support such purported finding of fact. Consequently there should be no adverse finding against the petitioner with reference to the episode concerning the superintendent standing on the courthouse steps.

Certiorari should be allowed with reference to this third question because the court below decided a federal question in a way probably in conflict with applicable decisions of this Court. The decision of the court below in the instant case is probably in conflict with the following decisions, among others, of this Court:

Consolidated Edison Co. of New York, Inc., et al. v.
National Labor Relations Board et al., 305 U. S.
197;

National Labor Relations Board v. Columbian
Enameling & Stamping Co., Inc., 306 U. S. 292.

4. The fourth of the four questions herein presented pertains to that portion of the opinion and decision of the court below granting enforcement against this petitioner of the provision contained in the order of the National Labor Relations Board and subsequently included in the order and decree of the court below as follows:

“(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the Act.”

Petitioner contends that the facts in this case do not require or even justify any cease and desist order. In any event the scope of the order must be so limited as to pre-

vent such violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which have been previously committed. The portion of the cease and desist order hereinabove quoted is in effect a blanket injunction and certiorari should be allowed with reference to the last of the four questions presented because the court below decided a federal question in a way probably in conflict with an applicable decision of this court. The court below thus probably erroneously included in its cease and desist order the portion thereof hereinabove quoted. The decision of the court below in the instant case in this regard is probably in conflict with the following decision:

National Labor Relations Board v. Express Publishing Co., 312 U. S. 426.

Wherefore, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit should be granted.

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